

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRIENDS OF ANIMALS,

Plaintiff,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and ANDREW
WHEELER, in his official capacity as
Acting Administrator of the U.S.
Environmental Protection Agency,**

Defendants,

and

**THE HUMANE SOCIETY OF THE
UNITED STATES**

Defendant-Intervenor.

Case No. 2:17-cv-1410-SI

ORDER

R. Scott Jerger, FIELD JERGER LLP, American Bank Building, 621 SW Morrison St., Suite 510, Portland, OR 97205; and Michael Ray Harris, FRIENDS OF ANIMALS, WESTERN REGION OFFICE, 7500 E. Arapahoe Rd., Suite 385, Centennial, CO 80112. Of Attorneys for Plaintiff.

Sheila Baynes, UNITED STATES DEPARTMENT OF JUSTICE, ENVIRONMENT AND NATURAL RESOURCES DIVISION, ENVIRONMENTAL DEFENSE SECTION, PO Box 7611, Washington, D.C. 20044. Of Attorneys for Defendants.

Julie M. Engbloom, LANE POWELL PC, 601 SW Second Ave., Suite 2100, Portland, OR 97204; Kimberly D. Ockene, THE HUMANE SOCIETY OF THE UNITED STATES, 1255 23rd St., NW, Suite 450, Washington, D.C. 20037; Douglas A. Hastings, MORGAN, LEWIS & BOCKIUS LLP, 1111 Pennsylvania Ave., NW, Washington, DC 20004. Of Attorneys for Defendant-Intervenor.

Michael H. Simon, District Judge.

United States Magistrate Judge Patricia Sullivan issued Findings and Recommendation (“F&R”) in this case on October 24, 2019. ECF 79. Judge Sullivan recommended that the Court: (1) find that the decision by the United States Environmental Protection Agency (“EPA”) not to initiate Special Review for ZonaStat-H was arbitrary and capricious; (2) grant Plaintiff’s Motion for Summary Judgment (ECF 41); (3) deny Defendants and Defendant-Intervenor’s cross-motions for summary judgment (ECF 42, ECF 43, and ECF 52); and (4) vacate and remand the decision of the EPA to that agency for further proceedings consistent with Judge Sullivan’s Findings and Recommendation. Defendants and Defendant-Intervenor filed timely objections (ECF 83 and ECF 84) to Judge Sullivan’s F&R, and Plaintiff timely responded (ECF 89).

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files an objection to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3). For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other

standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

The Court has reviewed de novo the Findings and Recommendation of U.S. Magistrate Judge Patricia Sullivan (ECF 79) and adopts the Findings and Recommendations. The Court concludes that EPA’s decision not to initiate Special Review for ZonaStat-H was arbitrary and capricious. Accordingly, the Court GRANTS Plaintiff’s Motion for Summary Judgment (ECF 41), DENIES Defendants and Defendant-Intervenor’s Cross-Motions for Summary Judgment (ECF 42, ECF 43, and ECF 52), and VACATES AND REMANDS the decision of the EPA back to that agency for further proceedings consistent with Judge Sullivan’s Findings and Recommendation.

IT IS SO ORDERED.

DATED this 31st day of March, 2020.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge